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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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GEORGE M. HOLLEY, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

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**PETITION FOR REVIEW ON WRIT OF CERTIORARI  
OF THE DECISION OF THE CIRCUIT COURT OF  
APPEALS, SIXTH CIRCUIT  
AND SUPPORTING BRIEF**



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George M. Holley, by his attorney Paul B. Moody, respectfully shows unto the Court as follows:

**SHORT STATEMENT OF MATTER INVOLVED**

This case involves income tax levied on certain interest paid by the City of Detroit.

The City of Detroit commenced an eminent domain proceeding to condemn land, including petitioner's land, for the widening of Woodward Avenue (R. 14). The City, being in financial difficulty, entered into contracts with petitioner and a major proportion of the other owners, providing that when a condemnation award should be made and confirmed, the award need not be paid within one year with interest at 5% per annum as provided by law, but might be paid in ten equal annual instalments with interest at  $4\frac{1}{4}\%$  per annum (R. 15-18).

The contract specifically provided any balance owing thereon should be tax exempt by the City, and that the contract should be construed to be a contract for the purchase of the land at the price awarded by the condemnation jury (R. 17). If the contracts had not been made, the City against its own desire, would because of its financial position have discontinued the condemnation proceedings (R. 15).

The proceedings resulted in a taking of the land and an award of damages to petitioner, the same being duly confirmed. Thereafter, pursuant to the contract, the City paid petitioner instalments of principal and interest at  $4\frac{1}{4}\%$  during each of the years 1934, 1935 and 1936 (R. 19).

The Commissioner of Internal Revenue assessed and collected from petitioner income taxes for the years 1934 through 1936 on the theory that the interest paid by the City on the contract was taxable interest (R. 10-11). The Commissioner has never made any claim that petitioner realized a capital gain on the sale of his land to the City.

Petitioner claimed the interest is exempt under Section 22 (b) (4) of the Revenue Act of 1934 and 1936, which are identical with the present law, Internal Revenue Code Section 22 (b) (4), providing that interest upon the obligations of a political subdivision of a state shall be exempt from income taxation.

Petitioner's claims for refund being denied he brought the present action for refund in the District Court for the Eastern District of Michigan, Southern Division. The facts were stipulated and adopted by the district judge as his findings of fact. The matter came up on appeal to the Circuit Court of Appeals for the Sixth Circuit.

On January 10, 1942, the Circuit Court filed its opinion holding the interest was part of the condemnation award

and as such taxable interest and entered judgment affirming dismissal of the case (124 Fed. (2nd) 909). Petition for rehearing was filed January 28, 1942, and denied without opinion on February 12, 1942.

### **BASIS OF JURISDICTION**

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals rendered on January 10, 1942, on writ of certiorari by virtue of Section 240 (a) of the Judicial Code of 1911, Chapter 231; 36 Stat. 1157, as amended by Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938.

### **THE QUESTIONS PRESENTED**

The following questions are presented by the case.

1. Is interest paid by a political subdivision of a state on instalment contracts for the purchase of land exempt from income tax under Section 22 (b) (4) of the Revenue Acts of 1934 and 1936, as interest paid on the obligation of a political subdivision of a state?

The Circuit Court of Appeals decided this question by ignoring the contract and holding the interest was paid as part of a condemnation award.

2. Is interest paid on a condemnation award exempt from income tax under Section 22 (b) (4) of the Revenue Acts of 1934 and 1936?

The Circuit Court of Appeals held the interest was taxable.

3. If not exempt, is interest paid on a condemnation award taxable as interest or only as capital gain, if there be gain?

The Circuit Court of Appeals held the interest was taxable as interest.

### REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The decision of the Circuit Court of Appeals, Sixth Circuit, in this case is in conflict with the decisions of other Circuit Courts of Appeal on the same subject.

A. In the instant case the Circuit Court held (as we think, erroneously) that interest paid as provided in the contract was part of the just compensation provided by law for the taking of the property and as such part of the award itself.

On this premise, the Court's final decision that the interest was taxable as interest is in conflict with two decisions of the Circuit Court of Appeals, Second Circuit, which held interest on a condemnation award not taxable as interest but only taxable as a capital gain, if such gain occurred. The conflicting decisions are:

*Seaside Improvement Co. v. Commissioner*, 103 Fed. (2d) 990 (CCA 2d);

*Commissioner v. Appleby's Estate*, 123 Fed. (2d) 700 (CCA 2d).

B. If the Circuit Court had held correctly that the interest was paid on an instalment contract for the purchase of land by the City, then its final decision holding the interest taxable is in conflict with decisions of three different Circuit Courts of Appeal which hold such interest exempt

*Norfolk National Bank v. Commissioner*, 66 Fed. (2d) 48 (CCA 4th);

*Kings County Development Co. v. Commissioner*,  
93 Fed. (2d) 33 (CCA 9th);  
*Commissioner v. Meyer*, 104 Fed. (2d) 155  
(CCA 2d).

2. The opinion of the Circuit Court of Appeals decides important questions of federal law which have not been but should be settled by the Supreme Court.

WHEREFORE your petitioner respectfully prays the Court to issue its writ of certiorari to review the Decision of the Circuit Court of Appeals, Sixth Circuit, in the case of George M. Holley, Appellant, vs. United States of America, Appellee, No. 8759.

PAUL B. MOODY  
*Attorney for Petitioner*  
1424 Ford Building  
Detroit, Michigan.

STATE OF MICHIGAN }  
COUNTY OF WAYNE } ss.

On this 3rd day of April, 1942, before me, a notary public in and for said County, personally appeared Paul B. Moody to me known to be the person named in and who signed the foregoing petition, and made oath that he has read the same, knows the contents thereof, and that the same is true in substance and in fact.

CAROLYN BELLAMY  
Notary Public, Oakland County, Mich.  
Acting in Wayne County, Michigan.  
My Commission expires July 14, 1942.